

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

GAIL MICHELMAN,

Plaintiff,

v.

LINCOLN NATIONAL LIFE INSURANCE  
COMPANY, *et al.*,

Defendants.

No. C10-0271RSL

ORDER GRANTING IN PART  
PLAINTIFF'S MOTION TO COMPEL

This matter comes before the Court on "Plaintiff's Motion to Compel Discovery from Defendant Lincoln." Dkt. # 41. Having reviewed the memoranda, declarations, and exhibits submitted by the parties, the Court finds as follows:

1. The meet and confer requirements of Fed. R. Civ. P. 37(a)(1) and Local Civil Rule 37(a)(1)(A) are imposed for the benefit of the Court and the parties. They are intended to ensure that parties have an inexpensive and expeditious opportunity to resolve discovery disputes and that only genuine disagreements are brought before the Court. In the circumstances presented here, compliance with the Rule would have involved face-to-face or telephonic communications regarding each of the deficiencies plaintiff perceived in defendant's discovery responses.

There is no evidence that the parties had face-to-face discussions regarding defendant's "general objections." Without identifying any particular objections, plaintiff made a

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1 written request that defendant strike its “general objections” on the ground that they are “directly  
2 contrary to the rules and disapproved by the Ninth Circuit.” Decl. of Dan Bridges (Dkt. # 42),  
3 Ex. 2 at 1. Following the meet and confer held on October 4, 2010, plaintiff’s counsel  
4 acknowledged that the parties “did not argue the issue at length” and repeated his demand that  
5 the “general objections” be withdrawn. Id., Ex. 3 at 1. A good faith effort to resolve this matter  
6 would have involved an exchange of information until no additional progress was possible. This  
7 did not happen. Even at this point in the discovery dispute, it is not clear what portion of  
8 defendant’s discovery responses plaintiff believes are improper.<sup>1</sup> The motion to compel is  
9 therefore denied as to plaintiff’s request that unspecified portions of defendant’s responses be  
10 stricken.

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12 2. Generally, a party is permitted to interview potential witnesses, including employees  
13 of the adverse party, in the absence of opposing counsel and without having to notify opposing  
14 counsel of the interview. If the witness is a speaking/managing agent of the adverse party,  
15 however, he or she is considered a “party” and must be contacted through counsel. Wright v.  
16 Group Health Hosp., 103 Wn.2d 192, 200-202 (1984).

17 Plaintiff interposed Interrogatory No. 4 in an effort to obtain the identity of and  
18 contact information for everyone involved in the claims handling process that led to this  
19 litigation. Anticipating that defendant might assert that certain employees were speaking agents,  
20 plaintiff specifically requested all information that would support such a contention.  
21 Defendant’s response was inadequate: it simply provided the name and title of seven employees,  
22 identified defense counsel’s address for six of them, and noted that the seventh employee was no  
23 longer employed by defendant.

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26 <sup>1</sup> In its “General Response and Objection,” defendant simply reserves the right to supplement its  
responses.

1 In its response to the motion to compel, defendant argues that certain employees  
2 are speaking agents for purposes other than this litigation and that its employees should not have  
3 to be contacted by plaintiff's counsel in the privacy of their homes. Defendant should have  
4 supported its speaking agent contentions when responding to the discovery request and should  
5 have sought a protective order regarding the home contact information. It did not do so.<sup>2</sup> Nor  
6 has defendant explained why it was unable to provide any contact information – even the last  
7 known contact information – for Melissa Leppink. Defendant shall supplement its response to  
8 Interrogatory No. 4 to provide a full and complete answer.<sup>3</sup>


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10 3. Interrogatory No. 5 seeks the identity of the person or persons who “‘owned’ or had  
11 responsibility for the loss that is at issue” in this case. Plaintiff does not explain what she means  
12 by “owned” or “responsibility for.” At the meet and confer on October 4, 2010, defendant  
13 pointed out that different people had different responsibilities in the claims handling process and  
14 sought clarification regarding plaintiff's intent. Plaintiff refused to provide clarification and also  
15 declined to accept information regarding each employee's role, apparently because the  
16 information was not provided in writing. Having thwarted the purpose of the meet and confer  
17 process, plaintiff may not now complain that defendant failed to answer a question that lacked  
18 clarity.

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22 <sup>2</sup> Plaintiff's counsel should be sensitive to the fact that people are often hostile to being  
23 contacted at their homes, be it by solicitors, credit card companies, politicians, or lawyers seeking  
24 information. Work contact information should be utilized first whenever feasible.

25 <sup>3</sup> For purposes of its supplemental response, defendant may assume that Interrogatory No. 4  
26 seeks the identity of and contact information for all employees and third parties who participated in the  
investigation and/or handling of the claim for life insurance proceeds due and owing under the policy  
issued to plaintiff's daughter, Elizabeth Michelman.

1 For all of the foregoing reasons, plaintiff's motion to compel is GRANTED in part  
2 and DENIED in part. Defendant Lincoln shall supplement its response to Interrogatory No. 4 as  
3 stated in this Order.

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5 Dated this 16th day of December, 2010.

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7 Robert S. Lasnik  
8 United States District Judge  
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